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## Santa Ana Regional Water Quality Control Board

March 24, 2021

Mr. John Fruciano for Don Fruciano  
Rite Aid Commercial Center  
9390 Conaty Place  
Riverside, CA 92504  
([jfruciano@yahoo.com](mailto:jfruciano@yahoo.com))

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Erik Munkvold (Agent for Service of Process)  
9390 Conaty Place  
Riverside, CA 92504  
([emunkvold@wattersonefm.com](mailto:emunkvold@wattersonefm.com))

### **SETTLEMENT OFFER NO. R8-2021-0024: EXPEDITED PAYMENT PROGRAM FOR VIOLATION OF WATER CODE SECTION 13399.33(C), WDID NO. 8 33C371151**

Dear Mr. John Fruciano,

This letter is to notify Rite Aid Commercial Center (hereinafter Permittee or you) of alleged violations of the California Water Code (Water Code) based on your failure to comply with the reporting requirements of the National Pollutant Discharge Elimination System (NPDES) Statewide General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ and 2012-0006-DWQ (Construction General Permit). You failed to submit the required annual report for the 2019-20 reporting year by September 1, 2020 as required by the Construction General Permit for the construction site located at 17055 Van Buren Boulevard in the City of Riverside (Site).

This is an invitation to participate in the Santa Ana Regional Water Quality Control Board's (Santa Ana Water Board) Expedited Payment Program to address mandatory minimum penalties that must be assessed pursuant to Water Code section 13399 *et seq.*

#### **ALLEGED VIOLATION:**

Santa Ana Water Board staff alleges that the Permittee has violated provisions of the Construction General Permit. Provision I.4.c. of the Construction General Permit requires that the Permittee submit Annual Reports to SMARTS by **September 1 of each year**.

Because the Permittee's report was not received by the deadline, Santa Ana Water Board staff requested that the Permittee submit the 2019-2020 Annual Report in two Notices of Noncompliance

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LANA ONG PETERSON, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

(NNC) issued on September 24, 2020 and October 27, 2020. The NNCs explained the Construction General Permit's reporting requirements and gave the Permittee an opportunity to comply with the reporting requirement without the imposition of a penalty if the report was submitted by November 23, 2021. Based on information in the Storm Water Multiple Application & Report Tracking System (SMARTS), as of March 24, 2021, the Annual Report has not been submitted.

Pursuant to Water Code section 13399.33, subdivisions (c) and (d), the Permittee is subject to a mandatory minimum penalty of not less than one thousand dollars (\$1,000) plus staff costs for failure to submit its Annual Report within sixty (60) days after the first NNC was sent. The Permittee may also be subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Santa Ana Water Board beginning with the date that the violations first occurred. The formal enforcement action that the Santa Ana Water Board uses to assess liability is an administrative civil liability complaint. The Santa Ana Water Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation.

#### **PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:**

You have two options to respond as outlined below.

- 1. Accept the Expedited Payment Program offer.** If the permittee chooses to accept this offer, you must comply with the Order and submit the requested Annual Report(s) and agree to pay a settlement of **\$1,621.20**. This settlement offer is based on Water Code section 13399.33(c) which requires \$1,000 per missing report plus staff costs. Staff costs in this matter are **\$621.20**.

This is a Conditional Offer subject to certain terms and conditions set forth below. If you choose this option, **you must sign and submit the enclosed Acceptance and Waiver form by April 23, 2021**. The form provides submittal instructions. Final closure on this action will occur after ultimate submission of the settlement amount.

Please submit the outstanding Annual Report(s) in SMARTS and an original (blue ink) signed Acceptance and Wavier form to:

Santa Ana Regional Water Quality Control Board  
Attn: Miguel Oviedo, Inland Stormwater Unit  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

In response to the Conditional Offer and payment in settlement of this enforcement action, the Santa Ana Water Board will forego issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violation identified in the NNCs.

- 2. Contest the violation.** To contest the violation the Permittee must submit, in writing, the basis of your challenge with supporting evidence. For example, you may have evidence that you previously submitted your Annual Report(s) or the site is not subject to the Construction

General Permit. If you choose this option, you must **submit your written documentation by April 23, 2021**. We will review your submission and, if we agree, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated. All responses should be directed to Miguel Oviedo at the address listed in the above paragraph.

If you do not respond in a manner described in the above options, Santa Ana Water Board staff will prepare an administrative civil liability complaint for the violations cited in the NNCs. The liability amount sought in the administrative civil liability complaint and/or imposed by the Santa Ana Water Board may be higher than the amount set forth in this Conditional Offer. Moreover, additional staff costs may be considered in the recommended liability amount.

### **CONDITIONS FOR SANTA ANA WATER BOARD ACCEPTANCE OF RESOLUTION:**

This offer to participate in the Expedited Payment Program is conditioned upon the Santa Ana Water Board's receipt of confirmation that the Permittee has submitted the Annual Reports in SMARTS on or before **April 23, 2021**. If you choose not to, or fail to, submit the Annual Reports on or before that date, this offer will be deemed withdrawn and a formal enforcement action will be pursued.

Federal regulations require the Santa Ana Water Board to publish notice of, and to provide at least thirty (30) days for public comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)).

If you accept the Expedited Payment Program offer, the settlement will be published in the following manner:

1. Upon receipt of the Permittee's Acceptance and Waiver, the Annual Reports, and other requested technical reports on or before **April 23, 2021** Santa Ana Water Board staff will publish a notice of the proposed resolution of the alleged violations.
2. If Santa Ana Water Board staff receives no comments within the notice period, the Santa Ana Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.
3. If Santa Ana Water Board staff receives significant comments in opposition to the settlement, this offer may be withdrawn. The Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed through a formal enforcement action.

This Expedited Payment Program offer does not address or resolve liability for any violation that is not specifically identified in the enclosed NNCs. The Santa Ana Water Board reserves the right to pursue formal enforcement of any violations not specifically cited in the attached NNCs.

Should you have any questions about this Expedited Payment Program or Notice of Noncompliance, please contact Miguel Oviedo at (951) 782-3238 or at [miguel.oviedo@waterboards.ca.gov](mailto:miguel.oviedo@waterboards.ca.gov).

Mr. Fruciano  
Settlement Offer No. R8-2021-0024  
WDID No. 8 33C371151

March 24, 2021

- 4 -

Sincerely,

 Digitally signed by Jayne Joy  
Date: 2021.03.24 09:25:54 -07'00'

**Jayne Joy**  
Water Boards

Jayne Joy P.E.  
Assistant Executive Officer

Enclosures:

Notice of Noncompliance dated September 24, 2020  
Notice of Noncompliance dated October 27, 2020  
Acceptance of Conditional Resolution and Waiver of Right to Hearing; proposed order

cc (w/enclosures):

Catherine Hawe, Office of Enforcement, State Water Resources Control Board



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Santa Ana Regional Water Quality Control Board

September 24, 2020

Don Fruciano  
Don Fruciano  
9390 Conaty place  
Riverside, CA 92504

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**NOTICE OF NON-COMPLIANCE: FAILURE TO COMPLY WITH THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ, NPDES NO. CAS00002 (GENERAL PERMIT) WDID NO. 8 33C371151**

Dear Mr. Don Fruciano:

Regional Board records indicate that Don Fruciano is operating a construction site identified as Rite Aide Commercial Center, located at SEC of Washington St. & Van Buren Blvd., in the city of Riverside. This site is regulated under the Construction General Permit and is identified by WDID No. 8 33C371151. Section XVI.A. of the Construction General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database.

Our records show that Don Fruciano's annual report for the July 1, 2019 to June 30, 2020 reporting period has not been submitted. Don Fruciano is consequently in violation of Section XVI.A. of the Construction General Permit for failure to submit a complete 2019-2020 Annual Report.

We request that you submit a complete **2019-2020 Annual Report** via the online SMARTS database no later than **October 26, 2020**.

**The online SMARTS database is available at:**

<https://smarts.waterboards.ca.gov>

You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline and propose the measures you will take to ensure timely submittals in the future. The statement must be uploaded as part of the SMARTS annual report Attachments.

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WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

Failure to submit the requested information by **October 26, 2020** will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov). You may also contact Nam Nguyen at 951-321-4582 or [nam.nguyen@waterboards.ca.gov](mailto:nam.nguyen@waterboards.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Fischer', written in a cursive style.

Adam Fischer, Chief  
Inland Storm Water Unit

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**

Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

Certified Mail Fee

**\$3.55**

**10/27/2020**

\$

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy)

**\$2.85**

Return Receipt (electronic)

\$

Certified Mail Restricted Delivery

\$

Adult Signature Required

\$

Adult Signature Restricted Delivery

\$

**AR 2nd NNC**  
Here

**8 33C371151**

**450072**

Postage

**\$.55**

\$

Total Postage and Fees

**\$6.95**

Sent To

**Mr. Don Fruciano**

Street and Apt. No., or PO Box No.

**Don Fruciano**

**9390 Conaty Place**

City, State, ZIP+4®

**Riverside, CA 92504**

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7016 2070 0000 6805 8954



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Santa Ana Regional Water Quality Control Board

October 27, 2020

Don Fruciano  
Don Fruciano  
9390 Conaty place  
Riverside, CA 92504

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**FINAL NOTICE OF NON-COMPLIANCE - GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES, ORDER NO. 2009-0009-DWQ, NPDES NO. CAS000002, WDID 8 33C371151**

Dear Mr. Don Fruciano:

Regional Board records indicate that Don Fruciano is operating a construction site identified as Rite Aide Commercial Center, located at SEC of Washington St. & Van Buren Blvd. in the City of Riverside. This site is regulated under the Construction General Permit and is identified by WDID **8 33C371151** - Application ID **450072**. Section XVI.A. of the General Permit requires that an Annual Report be submitted by September 1st each year via the online SMARTS database.

Our records show that Don Fruciano's annual report for the July 1, 2019 to June 30, 2020 reporting period has not been submitted. Don Fruciano is consequently in violation of Section XVI.A. of the General Permit for failure to submit a complete 2019-2020 Annual Report. We request that you submit a complete **2019-2020 Annual Report** via the online SMARTS database no later than **November 23, 2020**.

**The online SMARTS database is available at:**

<https://smarts.waterboards.ca.gov>

The following link may assist you with submitting the Annual Report and if applicable, a Notice of Termination:

[https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/smarts/construction/const\\_help\\_guides.shtml](https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/construction/const_help_guides.shtml)

You must also provide a statement explaining why the annual report was not submitted by the September 1 deadline, propose the measures you will take to ensure timely

WILLIAM RUH, CHAIR | HOPE SMYTHE, EXECUTIVE OFFICER



submittals in the future, and upload the statement as part of SMARTS annual report Attachments.

Failure to submit the requested information by **November 23, 2020** will result in further enforcement action, which may include civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a mandatory minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

**This is your second and final notice.** The first notice was dated and sent to you on September 24, 2020. Failure to submit the 2019-2020 Annual Report via the online SMARTS database by **November 23, 2020** may result in enforcement action, including civil monetary penalties of up to \$10,000 for each day of violation. Please note that Section 13399.33 of the California Water Code stipulates a minimum penalty of \$1,000 to those permittees that do not submit their annual reports after notification.

Should you need assistance in completing the Annual Report or have any questions relating to SMARTS, please contact the SMARTS Helpdesk at [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov). You may also contact Nam Nguyen at [nam.nguyen@waterboards.ca.gov](mailto:nam.nguyen@waterboards.ca.gov) or 951-321-4582.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Fischer', written in a cursive style.

Adam Fischer, Chief  
Inland Storm Water Unit

**SENDER: COMPLETE THIS SECTION**

**COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature  
 X *D. Fruciano*  Agent  Addressee

1. Article Addressed to:  
**Mr. Don Fruciano**  
**Don Fruciano**  
**9390 Conaty Place**  
**Riverside, CA 92504**  
**WDID: 8 33C371151 AppID: 450072**  
**10/27/2020**

B. Received by (Printed Name) *D. Fruciano* C. Date of Delivery *10/29/20*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No



9590 9402 1986 6123 8786 90

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

2. Article Number (Transfer from service label)  
**7016 2070 0000 6805 8954**



**ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING: (Proposed) ORDER**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Santa Ana Regional Water Quality Control Board (Regional Board), Rite Aid Commercial Center (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the violations described in the Notices of Non-Compliance (NNCs) which are attached and incorporated herein by reference.

The Discharger agrees that the Expedited Payment Program Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the administrative civil liability authorized by California Water Code section 13399.31, in the sum of \$1,621.20 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.31 that otherwise might be assessed for the violations described in the NNCs.

The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the NNCs and the amount of civil liability for such violations. The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the NNCs.

Upon Execution by the Discharger, the completed Acceptance and Waiver:

Miguel Oviedo, Inland Storm Water Unit  
Expedited Payment Letter  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Santa Ana Water Board to publish notice of and provide at least (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.



If no comments are received within the notice period that causes the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Santa Ana Water Board to resolve the violations set forth in the NNCs may be withdrawn. In that circumstance, the Discharger will be advised of that withdrawal, and an administrative civil liability complaint may be issued, and the matter may be set for a hearing before the Santa Ana Water Board. In the event that this matter proceeds to hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger further understands that once this Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the \$1,621.20 liability including staff costs shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Regional Board Executive Officer.

Please mail check to:

State Water Resources Control Board  
Re: Order No. R8-2021-0024  
Division of Administrative Services, Accounting Branch  
1001 I Street, 18<sup>th</sup> Floor, 95814  
P.O. Box 1888  
Sacramento, CA 95812-1888



I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

Rite Aid Commercial Center

By:   
(Signed Name)

4-20-21  
(Date)

JOHN FRUCIANO  
(Printed or Typed Name)

TRUSTEE  
(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION  
13323 AND GOVERNMENT CODE SECTION 11415.60.

Date: \_\_\_\_\_

By: **Hope Smythe**  Digitally signed by Hope Smythe  
Date: 2021.06.30 11:51:37 -07'00'

Hope Smythe, Executive Officer

